

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANDRE FARAH BOND,

Defendant-Appellee

UNPUBLISHED

October 16, 2007

No. 267679

Washtenaw Circuit Court

LC No. 05-000093-FH

ON RECONSIDERATION

Before: Talbot, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

The prosecutor appeals by leave granted from an order vacating defendant's conviction of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(b)(iii), and instead entering a conviction of fourth-degree criminal sexual conduct (CSC IV), MCL 750.520e.¹ We reverse, reinstate the jury's conviction of CSC II, and remand for sentencing consistent with this opinion.

At the time of the incident, defendant was working as a hall monitor at a high school where the victim was a student. Defendant was to escort the victim to a school locker room so she could retrieve her belongings and then see her off school grounds. After the victim retrieved her possessions from the locker room, defendant told her to enter a vacant office. She complied, and when she was halfway through the doorway, defendant suddenly grabbed her buttocks, "grinded on" her, and made sexually aggressive remarks. A few seconds later, when defendant removed his hands in order to unbutton the victim's pants, she pushed him away and left the office.

A jury found defendant guilty of CSC II. Defendant then filed a motion to vacate the conviction; the trial court reviewed this motion as a motion for a directed verdict. The court held that there was insufficient evidence to uphold the CSC II conviction and entered a directed verdict acquitting defendant of the CSC II charge. The court instead entered a conviction of CSC IV. The prosecutor contends that the trial court erred because sufficient evidence supported defendant's CSC II conviction. We agree.

¹ Although we need not decide the issue here, we note that the recent Supreme Court opinion in *People v Nix*, ___ Mich ___, 734 NW2d 548 (2007), may have an impact regarding whether the trial court acted appropriately in entering the CSC IV conviction.

A trial court may enter a directed verdict of acquittal following a jury verdict. See MCR 6.419(B). This Court reviews a trial court's decision concerning a motion for a directed verdict de novo "to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). This Court is "required to draw all reasonable inferences and make credibility choices in support of the jury verdict." See *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000) (discussing sufficiency of the evidence claims). We note that "[q]uestions of statutory interpretation are also reviewed de novo." *Nastal v Henderson & Assoc Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005).

MCL 750.520c(1) states, in relevant part:

A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

* * *

(b) That other person is at least 13 but less than 16 years of age and any of the following:

* * *

(iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

In the instant case, the evidence established that the victim was 15 at the time of the incident. The only pertinent inquiry is whether defendant used a position of authority "to coerce the victim to submit" to defendant's sexual contact. MCL 750.520c(1)(b)(iii); see also *People v Usman*, 428 Mich 902, 902; 406 NW2d 824 (1987).

To sustain a CSC II conviction under MCL 750.520c(1)(b)(iii), the authoritative position of the actor over the victim does not have to be formal. *People v Reid*, 233 Mich App 457, 472; 592 NW2d 767 (1999). In the instant case, while defendant was not a teacher or school administrator with which one would normally associate authority over a student in school, the evidence showed that defendant was employed by the school and did have the authority to escort the victim while she was in the school. Further, the incident happened in school, during regular school hours. Thus, defendant's use of his position of authority to command the victim to enter a school office could have been reasonably inferred from the evidence submitted to the jury.

We also find that when the trial record is viewed in the light most favorable to the prosecutor, a reasonable inference could be drawn that the victim did, for a short period of time, submit to defendant's sexual contact. The relevant definition of "submission" in Black's Law Dictionary (8th ed) is "yielding to the authority or will of another."

The victim indicated that she did not protest or physically resist defendant when he ordered her into the office, grabbed her buttocks, "grinded on her," and made sexual remarks. Only when defendant removed his hands from her buttocks (in order to unbutton her pants) did

the victim push him away and leave the scene. However, it did not matter that she ceased to submit to further contact at that point. The sexual contact had already occurred.

When the incident is viewed as one swiftly occurring transaction, it is a reasonable inference that defendant's authority enabled him to isolate the victim in the doorway to the vacant office and provided him with the ability to carry out the sexual contact without her resistance. In effect, he coerced her into submitting, however briefly, to the sexual contact. Therefore, we find that the jury's conviction of CSC II was reasonable based on the evidence presented, and the trial court erred by vacating this conviction.

The dissent concludes that no CSC II occurred because the victim was shocked and did not consent to the contact, and the incident lasted only seconds. However, we find that the victim's emotional state in this case did not negate her submission to defendant's contact. Also, we do not believe that the victim needed to consent to defendant's groping in order for the jury to find that she submitted to his actions. Submission has a passive definition (a mere "yielding" to authority), while the relevant definition of consent has more of an affirmative definition: "[a]greement, approval, or permission as to some actor or purpose" Black's Law Dictionary (8th ed). Further, while the victim submitted to defendant's sexual contact for only a few seconds, the law does not require that the victim submit for a minimum length of time. MCL 750.520c(1)(b)(iii).

Finally, we hold that the trial court erred in holding that it would grant a new trial on the CSC II charge in the event that this Court reversed its ruling. Indeed, the court specified no valid basis on which to do so. It appears that, in stating that it would grant a new trial, the court was relying on its justification for vacating the CSC II charge in the first place. We have rejected that justification.

We reverse the court's ruling, reinstate the conviction of CSC II, and remand for sentencing consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Patrick M. Meter